

ESTTA Tracking number: **ESTTA523890**

Filing date: **02/27/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203706
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Date	02/27/2013
Attachments	Motion to Compel.pdf (10 pages)(147415 bytes) Ex A.pdf (16 pages)(436445 bytes) Ex B.pdf (5 pages)(217595 bytes) Ex C.pdf (5 pages)(135664 bytes) Ex D.pdf (3 pages)(56529 bytes) Ex E.pdf (6 pages)(208470 bytes) Ex F.pdf (4 pages)(15165 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CHATHAM IMPORTS, INC.,
Opposer, Counterclaim Defendant,
Counter-counterclaim Plaintiff,

vs.

WASHINGTON PLACE LLC,
Applicant, Counterclaim Plaintiff,
Counter-counterclaim Defendant.

Opposition No. 91203706

U.S. Serial No. 77/962,565
For the Mark **KNOW THY FARMER**

**OPPOSER CHATHAM IMPORTS, INC.'S MOTION TO COMPEL
RESPONSES TO INTERROGATORY NOS. 8 & 9**

Opposer Chatham Imports, Inc. (“Chatham”) hereby moves for an Order pursuant to 37 C.F.R. §§ 2.120(d)(1) and 2.120(e), and Federal Rule of Civil Procedure 37, compelling Applicant Washington Place LLC (“Washington Place”) to provide full answers to Interrogatory Nos. 8 and 9 of Chatham’s First Set of Interrogatories, served on November 28, 2012. Washington Place’s sole objection to these two interrogatories is on the grounds of excessive number, and is both substantively wrong and procedurally improper.

I. INTRODUCTION

Chatham owns U.S. Registration No. 3,829,924 for the mark “FARMER’S” to identify “Alcoholic beverages, namely, distilled spirits” in International Class 33. Chatham’s rights in and to that mark date back to at least as early as May 1, 2009, the date on which Chatham’s intent-to-use application was filed. Chatham currently is using the mark in commerce, and has been doing so continuously since May of 2010.

The current proceeding relates to Washington Place’s attempt to register the mark “KNOW THY FARMER” to identify “Wines, distilled spirits, fruit wines” in International Class 33. Washington Place filed U.S. Application Serial No. 77/962,565 on an intent-to-use basis on

March 18, 2010. After being granted an extension of time, Chatham filed a Notice of Opposition on February 7, 2012 based on a likelihood of confusion with its “FARMER’S” mark.

On April 17, 2012, Washington Place filed a counterclaim for cancellation of U.S. Registration No. 3,829,924, based on alleged prior rights to the mark “KNOW THY FARMER,” embodied in U.S. Registration No. 3,899,559 to identify “Fruit preserves, preserved fruit and vegetables, pickled vegetables, pickles, eggs, milk” in International Class 29 and “Pancake mixes, flour, salt, popcorn, coffee, coffee mixes, cakes, frozen confections, ice cream, granola, wheat based cereal, fruit cakes, edible ices, baked products, namely cookies, cakes, breads, scones, croissants, crackers” in International Class 30. The filing date of this Registration is March 30, 2010, but Washington Place claims use dating back to May 2, 2005 for all goods identified. Washington Place contends that the goods identified in U.S. Application Serial No. 77/962,565 are within the natural zone of expansion of U.S. Registration No. 3,899,559.

The parties currently are engaged in discovery. Interrogatory Nos. 8 and 9 from Chatham’s First Set of Interrogatories ask Washington Place to provide information relating to the products on which it has used or intends to use the “KNOW THY FARMER” mark, including the identification of such products, the dates such use began, the annual sales and marketing expenditures relating to such products, the target customers, and the channels of trade used. To date, Washington Place has refused to provide any information in response to these interrogatories.

II. GOOD FAITH EFFORTS TO RESOLVE THIS DISPUTE

As set forth below, Chatham certifies pursuant to 37 C.F.R. § 2.120(e) that, through its attorneys, it has made a good faith effort to resolve the issues raised herein with Washington Place, through both correspondence and the offer of a teleconference. The parties have been unable to reach agreement.

III. BACKGROUND

On November 28, 2012, Chatham served its First Set of Interrogatories (Nos. 1-23) on Washington Place. Chatham agreed to Washington Place's requested extension of time to respond to those interrogatories, and Washington Place served its responses and objections on November 9, 2012. Pursuant to 37 C.F.R. § 2.120(e), a copy of Washington Place's Response to Opposer's First Set of Interrogatories is attached hereto as Exhibit A.

Washington Place did not assert a general objection on the grounds of excessive number, but instead provided responses and specific objections to Chatham's First Set of Interrogatories. Washington Place selectively asserted a specific objection to Interrogatory Nos. 8 and 9 – and only those two of Chatham's twenty-three interrogatories – on the grounds that responding “would exceed the numerical limit of seventy-five (75) interrogatories that 37 CFR § 2.120(d) imposes on Opposer.” (Ex. A, pp. 6-7.)

On November 21, 2012, Chatham informed Washington Place that its wholesale refusal to respond to Interrogatory Nos. 8 and 9 was improper, and asked that Washington Place provide supplemental responses, offering to conduct a telephone conference to resolve the issue. (Ex. B, 11/21/2012 Letter from Stitt to Lindenbaum, p. 2.) Washington Place responded that “[its] response to the seven (7) sub-parts in Interrogatory No. 8 and the five (5) sub-parts in Interrogatory No. 9 would exceed the limit imposed by 37 § 2.120(d),” and asked that Chatham withdraw just those two interrogatories. (Ex. C, 12/7/2012 Letter from Davis to Stitt, p. 2.) At that point, the parties stipulated to a 60-day extension of all deadlines in the case to allow time for them to try to resolve various discovery disputes.

On January 17, 2013, Chatham asked Washington Place to reconsider its position that Interrogatory Nos. 8 and 9 – which it admitted had a total of at most 12 subparts – exceeded the statutory limit of seventy-five interrogatories. (Ex. D, 1/17/2013 Letter from Stitt to Davis, p. 1.)

Washington Place again refused, and this time claimed that the same two interrogatories contained “a total of thirteen (13) sub-parts and if Applicant answered these Interrogatories regarding each of its products, it exceeds the Board imposed limits.” (Ex. E, 1/29/ 2013 Letter from Davis to Stitt, p. 4.) Washington Place also asserted, for the first time, an objection to the scope of these interrogatories, claiming that “to force Applicant to answer each sub-part regarding each and every product that it has used or intends to use the KNOW THY FARMER mark in connection with is unduly burdensome and therefore improper.” (*Id.*) Washington Place’s proposed solution was to withdraw *all* of its interrogatory responses in order to resolve the objection with respect to Interrogatory Nos. 8 and 9. (*Id.*) Chatham informed Washington Place that its proposal was not acceptable, and that it would seek the Board’s assistance to obtain substantive responses to Interrogatory Nos. 8 and 9.

IV. ARGUMENT

Washington Place cherry-picked Interrogatory Nos. 8 and 9 from Chatham’s first set of twenty-three numbered interrogatories, and refused to answer only those two on the grounds of excessive number. Washington Place not only bases its objection on a misinterpretation of the statutory limitation on interrogatories, it also ignores the statute’s procedural requirements. Moreover, Washington Place cannot deny the relevance of the information requested. Its improper objection is simply a delay tactic. Accordingly, Chatham requests that the Board enter an Order compelling Washington Place to provide full and complete answers to Interrogatory Nos. 8 and 9.

A. Washington Place Admits That Interrogatory Nos. 8 and 9 Have At Most Thirteen Subparts.

Washington Place objected to only Interrogatory Nos. 8 and 9 as exceeding the limit of seventy-five set forth in 37 C.F.R. § 2.120(d). (Ex. A, pp. 6-7.) It did not include a general

objection that the entire set violated the statutory limit, nor did it object specifically to any other interrogatories on the grounds of excessive number. It is undisputed that the two interrogatories to which Washington Place specifically objected contain less than seventy-five subparts. On two separate occasions, Washington Place admitted that the total number of subparts in Interrogatory Nos. 8 and 9 is, at most, 13.¹ (Ex. C, p. 2; Ex. E, p. 4.) Washington Place also makes no argument, and cannot show, that those 13 subparts, even when coupled with the remaining interrogatories, exceed the limit of seventy-five.² For each of those reasons, Washington Place's specific objection to those two interrogatories must fail.

B. The Statutory Limitation Applies To The Number Of Interrogatories Propounded, Not The Number Of Products At Issue.

Instead of arguing that the number of subparts in Interrogatory Nos. 8 and 9 violates the statutory limit, Washington Place argues that *its response* to those 13 subparts for an undisclosed number of products “would exceed the numerical limit of seventy-five (75) interrogatories that 37 C.F.R. § 2.120(d) imposes on Opposer.” (Ex. A, pp. 6-7; Ex. E, p. 4 (“... a total of thirteen (13) sub-parts and if Applicant answered these Interrogatories regarding each of its products, it exceeds the Board imposed limits”).) Thus, Washington Place's objection is based on the number of *products* for which it allegedly has to provide a response, not on the number of *interrogatories* propounded by Chatham.

Washington Place contends that Interrogatory Nos. 8 and 9 violate the statutory limitation because the number of subparts multiplied by the (as yet undisclosed) number of products is

¹ The first time Washington Place counted, it arrived at 12 subparts. (Ex. C, p. 2.) Without explanation, that number increased to 13 subparts when it counted the second time. (Ex. E, p. 4.) Chatham disagrees, and contends that Interrogatory Nos. 8 and 9 contain no more than 11 subparts. However, because even Washington Place's highest count is well within the statutory limit, Chatham has used that number for purposes of this motion.

² Even if Washington Place had followed the proper procedure and submitted a general objection to the entire set of interrogatories, it would still fail. As shown in Exhibit A, the total number of interrogatories served by Chatham, including subparts, is well within the statutory limit.

greater than seventy-five. (Ex. E, 1/29/ 2013 Letter from Davis to Stitt.) Washington Place is wrong. Pursuant to the Board’s counting method, if an interrogatory “asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party’s involved marks, *it will be counted as a single interrogatory.*” TBMP § 405.03(d) (emphasis added). That is true, even though multiple responses are required. Interrogatory Nos. 8 and 9 ask for particular pieces of information, such as annual sales and date of first use, for the products on which Washington Place claims to use the mark at issue. (Ex. A, pp. 6-7.) Applying the Board’s counting rules, the total number of interrogatories is, by Washington Place’s own admission, no more than 13.

Indeed, if Washington Place is correct that the number of products at issue should be used as a multiplier in counting interrogatories, an applicant that used a mark on 76 different products would not have to answer a single interrogatory asking for the date of first use. That cannot be correct.

C. Washington Place Ignored Board-Mandated Procedure.

Washington Place’s specific objection to Interrogatory Nos. 8 and 9 on the grounds of excessive number fails for the additional reason that Washington Place did not follow the procedure required by statute to preserve such an objection. The statute provides that an objection to the number of interrogatories should be presented generally to the whole set, not specifically to select interrogatories within that set:

If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, *and is not willing to waive this basis for objection, that party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number...*

37 CFR § 2.120(d) (emphasis added). Washington Place served answers and specific objections to Chatham's First Set of Interrogatories. It did not serve a general objection on the grounds of excessive number. When confronted with its failure to follow the procedure mandated by the Board, Washington Place responded that "the more productive and practical approach" was to provide answers and specific objections to the remaining interrogatories. (Ex. E, p. 4.)

Washington Place's chosen approach disregards the Board's unambiguous statement that "a party should not answer what it considers to be the first 75 interrogatories and object to the rest as excessive." TBMP § 405.03(e). Moreover, that approach was considered and rejected when Rule 2.120(d) was amended in 1991 to adopt the current procedure. 56 Fed. Reg. 46376.

Washington Place cannot start over and engage in further delay by withdrawing all of the interrogatory responses it served within the statutory time period, and electing instead to proceed with an objection on the grounds of excessive number. The time for submitting a general objection instead of responses has passed. Because it did not follow the procedure mandated by the statute, Washington Place waived any objection to Chatham's First Set of Interrogatories on the grounds of excessive number. 37 CFR § 2.120(d); TBMP § 410.

D. The Relevance Of The Information Requested Is Beyond Dispute.

Washington Place's selective refusal to answer only Interrogatory Nos. 8 and 9 was no accident. Washington Place did not simply object to the entire set, nor did it count what it contends are the first seventy-five interrogatories and object to the rest.³ It pulled two interrogatories from the middle of the set that it did not want to answer, and objected to those two alone on the grounds of excessive number. Washington Place's motives are clear from its

³ As set forth above, answering the first seventy-five also would have been improper. The only proper procedure is to submit a general objection on the grounds of excessive number instead of providing responses and specific objections. 37 CFR § 2.120(d)(1).

insistence that Chatham withdraw only those two interrogatories to resolve this dispute. (Ex. C, p. 2.)

The interrogatories that Washington Place selectively refused to answer seek information that goes to the heart of the current dispute, namely information relating to the very use of the KNOW THY FARMER mark upon which Washington Place bases its claim for the cancellation of Chatham's asserted registration. Washington Place itself put such information at issue in this proceeding. *See Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976) (dates petitioner's plants first began production of goods bearing mark relevant to claim of priority). Additionally, information regarding Washington Place's use and intended use of the mark at issue is relevant to the determination of likelihood of confusion. *See* TBMP § 414; *Double J Broward Inc. v. Skalongy Sportswear GmbH*, 21 USPQ2d 1609, 1612 (TTAB 1991) (Applicant's use or intended use of mark in commerce within United States is relevant).

Washington Place can hardly dispute the relevance of the information requested, given that it has requested corresponding information from Chatham regarding use of the FARMER'S mark.⁴

(*See*, Ex. F, excerpts from Washington Place's First Set of Interrogatories to Chatham, Nos. 2-3, 5, 6, 7, 8.) *See also Amazon Techs. Inc. v. Wax*, 93 USPQ2d 1702, 1706 (TTAB 2009) (citing TBMP § 402.01, "a party ordinarily will not be heard to contend that a request for discovery is proper when propounded by the party itself, but improper when propounded by its adversary").

Accordingly, it is Washington Place's obligation to produce the information requested in Interrogatory Nos. 8 and 9, particularly that upon which it intends to rely to support its claim of

⁴ For the first time in its January 29, 2013 letter, Washington Place introduced an objection to the scope of Interrogatory Nos. 8 and 9 as overly broad because they seek information "regarding each and every product that it has used or intends to use the KNOW THY FARMER mark in connection with." (Ex. E, p. 4.) This objection was not included in the initial responses served by Washington Place. As such, it has been waived. TBMP § 410.

priority. TBMP § 402.01. Its unfounded objections to doing so are merely for the purpose of delay. Washington Place should not be permitted to ignore substantive and procedural statutory requirements to avoid producing information to which Chatham is entitled.

V. CONCLUSION

For the reasons stated above, Chatham respectfully requests that the Board enter an Order compelling Washington Place to provide full and complete answers to Interrogatory Nos. 8 and 9.

Dated this 27th day of February, 2013.

Respectfully submitted,

s/Tracy A. Stitt/

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ATTORNEYS FOR OPPOSER

Chatham Imports, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2013, a true and correct copy of the above and foregoing document entitled OPPOSER CHATHAM IMPORTS, INC.'S MOTION TO COMPEL RESPONSES TO INTERROGATORY NOS. 8 AND 9 was served via overnight courier on the following:

Jeffrey Lindenbaum
Govinda Davis
Collen IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Attorney for Applicant

s/Tracy A. Stitt/
Attorney for Opposer
Chatham Imports, Inc.

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Chatham Imports, Inc.

Opposer,

v.

Washington Place LLC
Applicant.

Opp. No.: 91203706

Serial No. 77962565

Registration No. 3,829,294

Registration No. 3,899,559

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

Applicant, Washington Place LLC ("Washington Place" or "Applicant"), hereby serves its Objections and Responses to Opposer's First Set of Interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Applicant objects to each and every interrogatory in its entirety on the ground that Applicant is responding on the basis of its current knowledge and information. Applicant reserves the right to supplement each of its interrogatories.
2. Applicant objects to each and every request insofar as and to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any

inadvertent disclosure of such information shall not be a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

3. Applicant objects to each and every request insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Applicant; such information will not be disclosed without an appropriate protective order.
4. Applicant objects to each and every request to the extent it seeks production of information relating to or revealing proprietary development activities for Applicant products not yet manufactured or not yet on sale or otherwise available to the public. The slight relevance, if any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Applicant were it to be disclosed or available to competitors of Applicant. Applicant will not provide such information.
5. Applicant objects to each and every request to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.
6. Applicant objects to Opposer's definitions in their entirety to the extent same seeks to impose obligations on Opposer beyond those permitted by the Federal Rules of Civil Procedure of the Local Rules applicable to this matter.
7. Applicant objects to each and every request to the extent it calls for information that exceeds a reasonable durational scope.
8. Applicant objects to each and every document production request to the extent it calls for information not yet available as these responses are made during the discovery process.

Applicant reserves the right to supplement responses when the information becomes available.

9. Applicant objects to each and every interrogatory to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.
10. Applicant objects to each and every interrogatory and request for production to the extent it is duplicative.
11. Applicant objects to each and every interrogatory to the extent that it is not limited in geographic scope.

OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1: Identify the persons most knowledgeable with respect to Applicant's conception, origination, consideration, selection, design and adoption of the KNOW THY FARMER Mark. For each person identified, their respective areas of knowledge should be briefly summarized.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant identifies Laureen Barber, Dan Barber and David Barber as the persons most knowledgeable with Applicant's conception, origination, consideration, selection, design and adoption of the KNOW THY FARMER Mark. Laureen Barber, Dan Barber and David Barber's area of knowledge includes conception of the KNOW THY FARMER Mark and presentation of the mark to Applicant's management team in April 2005.

INTERROGATORY NO. 2: Identify the persons most knowledgeable with respect to Applicant's past, current, proposed or contemplated use in the United States of the KNOW THY FARMER Mark, including all uses of the Mark by Applicant, and dates of such use.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant identifies David Barber, Dan Barber, Laureen Barber, Adam Kaye, Irene Hamburger, Philippe Gouze, and Peter Bradley as the persons most knowledgeable with respect to Applicant's past, current, proposed or contemplated use in the United States of the KNOW THY FARMER Mark.

INTERROGATORY NO. 3: Identify the persons most knowledgeable with respect to Applicant's sales and advertising, promotion or marketing, or intended sales and advertising, promotion or marketing of goods and/or services in the United States under the KNOW THY FARMER Mark.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant identifies Peter Bradley as the person most knowledgeable with respect to Applicant's sales and intended sales and Irene Hamburger as the person most knowledgeable with respect to advertising, promotion or marketing, or intended sales and advertising, promotion or marketing of goods and/or services in the United States under the KNOW THY FARMER Mark.

INTERROGATORY NO. 4: Identify any formal or informal interviews, studies or surveys performed by or for you referring or relating to the use of the phrase “KNOW THY FARMER” in connection with any product.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it has not conducted any interviews, studies or surveys referring to or relating to the use of the phrase “KNOW THY FARMER.”

INTERROGATORY NO. 5: Identify any formal or informal interviews, studies, or surveys performed by or for you relating to Opposer’s use of the FARMER’S Mark or intended to directly or indirectly measure the strength, recognition, or perception of the FARMER’S Mark.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it has not conducted any interviews, studies or surveys referring to or relating to Opposer’s use of the FARMER’S Mark.

INTERROGATORY NO. 6: Identify any trademark search and/or investigation performed by or for you to ascertain whether your use of the KNOW THY FARMER Mark might infringe the trademark rights of others.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that a trademark search was conducted by Applicant’s former counsel prior to Applicant’s filing its trademark application for the KNOW THY FARMER Mark.

INTERROGATORY NO. 7: Describe the manner by which you first learned of Opposer's use of the FARMER'S MARK, including the date such knowledge was obtained and the identity of the persons who obtained such knowledge.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it first learned of Opposer's use of the FARMER'S Mark in connection with this opposition proceeding and David Barber is the person who obtained such knowledge.

INTERROGATORY NO. 8: Identify all products in connection with which Applicant has used, or intends to use, the KNOW THY FARMER Mark. For each product identified:

- (a) state the date on which you commenced, or intend to commence, providing such product;
- (b) state the annual dollar and unit volume of sales for such product;
- (c) set forth the annual advertising expenditures and/or budget for such product;
- (d) describe the geographical areas in which such product has been or will be provided;
- (e) describe the channels of trade within which such product has been or will be provided;
- (f) set forth the target customer for such product; and
- (g) set forth the average price you charge, or intend to charge, for such product.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Applicant further objects to this Interrogatory because Applicant's response would exceed the numerical limit of seventy-five (75) interrogatories that 37 CFR § 2.120(d)(1) imposes on Opposer.

INTERROGATORY NO. 9: For each product identified in response to Interrogatory No. 8, describe any and all use of the KNOW THY FARMER Mark in connection with that product, including, without limitation, the date of first use, the identification of all documents that mention, relate or refer to your use of the phrase “KNOW THY FARMER” in connection with that product, or that demonstrate the use of the phrase “KNOW THY FARMER” in connection with that product.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant directs Opposer to its response to Interrogatory No. 8.

INTERROGATORY NO. 10: State whether any labels for the goods in International Class 33 of the KNOW THY FARMER Application have been submitted and/or approved for use by any regulatory authority, including, without limitation, the State of New York, and the United States Alcohol and Tobacco Tax and Trade Bureau.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that labels for the goods in International Class 33 of the KNOW THY FARMER Application have been submitted and/or approved by a regulatory authority.

INTERROGATORY NO. 11: Identify all retail or wholesale stores, websites by URL, and any other outlets through which Applicant has marketed, promoted, or sold, or intends to market, promote, or sell, products or services bearing the KNOW THY FARMER Mark.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it has marketed, promoted, or sold, or intends to market, promote, or sell, products or services bearing the KNOW THY FARMER Mark through the following outlets: Bluehillfarm.com, Terrain, Jack's Stir Brew Coffee, New York Mouth, Shelter Half, Gifts for the Good Life, Williams Sonoma, Foodzie, Gilt Taste, Whole Foods, Citarella, Gourmet Garage, Agata and Valentina, Fairway, Dean & DeLuca, Mrs. Green's, Zabar's, Eli's, Murray's Cheese, Guido's, Irving Farm, and Union Market.

INTERROGATORY NO. 12: Describe all advertising and promotional measures taken in advertising or promoting the sale of any products or services under the KNOW THY FARMER Mark, specifying each publication, radio station, television station, Internet website, or other advertising medium used in connection with such advertising or promotion and the date(s) on which such advertising or promotional activity occurred.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it advertises and promotes the sale of products or services under the KNOW THY FARMER Mark through Apartment Therapy, Google Search Engine, Blogs and Editorial Outlets, Blue Hill Farm Blog, Facebook, Twitter, Foodzie, Williams Sonoma, and New York Mouth.

INTERROGATORY NO. 13: Identify any third parties that have assisted in the sale, offer for sale, promotion, manufacture, distribution, design, or other duty relating to the KNOW THY FARMER Mark or goods or services bearing the KNOW THY FARMER Mark.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Applicant further objects to this Interrogatory as vague. Notwithstanding and without waiving said objections, Applicant directs Opposer to Applicant's responses to Interrogatories Nos. 11 and 12.

INTERROGATORY NO. 14: Identify any agreements between Applicant and any third party referring or relating to the KNOW THY FARMER Mark, including, without limitation, all licenses, assignments, or other agreements.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it is not a party to any agreements with any third parties referring or relating to the KNOW THY FARMER Mark.

INTERROGATORY NO. 15: Identify and describe any periods of non-use of the KNOW THY FARMER Mark since the date of first use alleged in the KNOW THY FARMER Registration.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that there are no periods of non-use of the KNOW THY FARMER Mark.

INTERROGATORY NO. 16: Identify all facts and documents supporting your allegation that the FARMER'S Mark is merely descriptive, as set forth in paragraph 7 of your Counterclaim.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Opposer's website states: "Why we call it Farmer's. In order to produce a flavorful organic gin, we sought out farmers dedicated to sustainability and preserving the earth. We found four farms growing organic crops that could help us create the highest quality organic gin. We think that there is no better way to honor our farmers than by naming our organic gin after them."

INTERROGATORY NO. 17: Identify all facts and documents supporting your allegation that the goods identified in International Class 33 in the KNOW THY FARMER Application are within the natural zone of expansion of the goods and services identified in the KNOW THY FARMER Registration, as set forth in paragraph 4 of your Counterclaim.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it has earlier use of the KNOW THY FARMER Mark on related goods such as beverages, food and spices and has naturally expanded its use of the KNOW THY FARMER Mark to goods in international class 033.

INTERROGATORY NO. 18: Identify all facts and documents supporting your contention that no likelihood of confusion exists or will exist between the FARMER'S Mark and the KNOW THY FARMER Application.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Further, Applicant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, seeks confidential, privileged and/or proprietary information, and does not comply with Federal Rule of Civil Procedure 34(b)(1)(A).

INTERROGATORY NO. 19: Identify all facts that you contend are contrary to the allegations contained in Opposer's Notice of Opposition and Counterclaim for Cancellation of the KNOW THY FARMER Registration.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Further, Applicant objects to this Interrogatory on the basis that it is vague, overly broad, unduly burdensome, seeks confidential, privileged and/or proprietary information, and does not comply with Federal Rule of Civil Procedure 34(b)(1)(A).

INTERROGATORY NO. 20: Identify any affirmative defenses you intend to rely on in this proceeding, and the facts that support any such defenses.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant directs Opposer to its Answer and Counterclaims filed in response to Opposer's Notice of Opposition.

INTERROGATORY NO. 21: Set forth your retention policy for electronic mail, including the type of electronic mail system used, and identify any person, including yourself, who may have communicated via electronic mail concerning Applicant's use of the KNOW THY FARMER Mark.

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that it does not have a retention policy for electronic mail.

INTERROGATORY NO. 22: For each Document Request set forth in Opposer's First Request for the Production of Documents, identify the person or persons who supplied responsive documents.

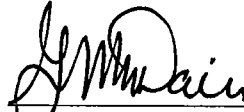
RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that David Barber, Laureen Barber, Irene Hamburger, Philippe Gouze, Peter Bradley, John Jennings, and Amanda Sisk supplied responsive documents to Opposer's First Request for the Production of Documents.

INTERROGATORY NO. 23: Identify every person supplying information or otherwise assisting in the preparation of Answer(s) to these Interrogatories. For each person identified, set forth the Interrogatory responses for which they supplied information or otherwise assisted in the preparation of Answer(s).

RESPONSE: Applicant hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving said objections, Applicant states that David Barber,

Laureen Barber, Irene Hamburger, Philippe Gouze, Peter Bradley, John Jennings, and Amanda Sisk supplied information in response to preparation of this Answer to these Interrogatories.

Respectfully Submitted,



Jeffrey A. Lindenbaum

Govinda M. Davis

COLLEN *IP*

The Holyoke-Manhattan Building

80 South Highland Avenue

Ossining, New York 10562

Tel. 914-941-5668

Fax 914-941-6091

jlindenbaum@collenip.com

gdavis@collenip.com

Attorneys for Registrant

Dated: November 9, 2012

JAL/GMD

CERTIFICATE OF SERVICE

I, Govinda M. Davis hereby certify that on November 9, 2012, a copy of the foregoing **Applicant's Response to Opposer's First Set of Interrogatories**, and **Applicant's Response to Opposer's First Requests for the Production of Documents** were served, via First Class Mail and e-mail, postage pre-paid, on Opposer's attorney of record at the following address:

Tracy A. Stitt
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
tastitt@jonesday.com



**VERIFICATION OF APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF
INTERROGATORIES**

I, David Barber, President of Applicant Washington Place LLC, certify that I have read Opposer's First Set of Interrogatories and responses to same, and said responses are true to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Executed this 8 day of November, 2012.

EXHIBIT B

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190
TELEPHONE: +1.216.586.3939 • FACSIMILE: +1.216.579.0212

Direct Number: (216) 586-7019
tastitt@JonesDay.com

JP008044
923185-050404

November 21, 2012

VIA U.S. MAIL

Jeffrey A. Lindenbaum
Collen IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562

Re: Chatham Imports, Inc. v. Washington Place LLC

Dear Mr. Lindenbaum:

I am writing to address certain deficiencies in Washington Place LLC's ("Washington Place") responses to Chatham Imports, Inc.'s ("Chatham") First Set of Interrogatories and Requests for Production. Please note that Chatham's review of Washington Place's discovery responses is ongoing, and Chatham reserves the right to identify additional deficiencies as discovery continues.

General Objections

In its responses to Chatham's Interrogatories and Requests for Production, Washington Place objected to the disclosure of confidential and proprietary information absent an appropriate protective order. (General Objection No. 3.) However, Washington Place is the reason that the terms of the protective order have not been finalized. On November 8, 2012, I sent you a new version of that order accepting the majority of your client's revisions. To date, I have received no response. Please advise whether your client has any further revisions so that we may finalize the order and proceed with discovery.

Washington Place also has improperly refused to produce information relating to products currently in development. (General Objection No. 4.) The application at issue, U.S. Application Serial No. 77/962,565, is an intent-to-use application. Thus, Washington Place's claim that products in development for which it plans to use the KNOW THY FARMER Mark are only of "slight relevance" to this proceeding is false. Moreover, Washington Place has requested that Chatham produce information relating to products with which it intends to use the FARMER'S Mark. (See, e.g., Washington Place's Interrogatory Nos. 2, 3, 6.) Such information is discoverable. See TBMP Rule 414(8). Any concerns that Washington Place has regarding confidentiality will be addressed by the protective order, which provides that such information can be designated as Trade Secret/Commercially Sensitive, restricting access to outside counsel

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Jeffrey A. Lindenbaum

November 21, 2012

Page 2

only. Please confirm that Washington Place will produce responsive information relating to products for which it intends to use the KNOW THY FARMER Mark.

Responses to Chatham Imports, Inc. 's First Set of Interrogatories

Interrogatory Nos. 1, 2, and 3

As set forth in my September 24, 2012 letter to you, Washington Place's Initial Disclosures are deficient because they fail to identify the affiliation, address or telephone number of the witnesses as required by Federal Rule of Civil Procedure 26. To date, I have not received a response to that letter, and Washington Place's responses to Interrogatory Nos. 1, 2 and 3 suffer from the same deficiencies. The foregoing Interrogatories request the identification of individuals with knowledge of various subjects. In response, Washington Place provided names, but failed to provide the affiliation or title of those individuals. Chatham is entitled to this information, and Washington Place must supplement both its Initial Disclosures and its responses to Interrogatory Nos. 1, 2, and 3. See TTAB Manual of Procedure ("TBMP") Rule 414(7).

Interrogatory Nos. 8 and 9

Washington Place wholly refused to answer Interrogatory Nos. 8 and 9 on the basis that its response "would exceed the numerical limit of seventy-five (75) interrogatories that 37 CFR § 2.120(d)(1) imposes on Opposer." Washington Place's specific objection to these select interrogatories on the ground of excessive number is not well taken. Pursuant to the counting method set forth in TBMP Rule 405.03, Chatham's First Set of Interrogatories is well within the 75-question limit. Moreover, Washington Place did not serve a general objection on the ground of excessive number "within the time for (and instead of) serving answers and specific objections," as required by 37 CFR § 2.120(d)(1). Accordingly, any objection to the total number of interrogatories has been waived. See TBMP Rule 410.

Interrogatory Numbers 8 and 9 seek the identification of products in connection with which Washington Place uses or has used the KNOW THY FARMER Mark, as well as specific information relating to that use, such as dates of first use, sales information, advertising expenditures, channels of trade used, target consumer and price. Washington Place cannot deny the relevance of this information to the current proceeding. See, e.g., TBMP Rule 414(5). At a minimum, such information is relevant to Washington Place's claims that it has priority and that there is no likelihood of confusion. Washington Place must provide complete responses to these Interrogatories.

Jeffrey A. Lindenbaum
November 21, 2012
Page 3

Interrogatory No. 17

Interrogatory No. 17 seeks Washington Place's support for its contention that the goods identified in U.S. Application Serial No. 77/962,565 are within the natural zone of expansion of the goods identified in its prior registrations for the same mark. Washington Place's response is insufficient. It claims "earlier use" on "related goods such as beverages, food and spices," but fails to identify the goods on which it has used the mark, or the dates such use commenced. Chatham is entitled to know the factual basis for Washington Place's claim that distilled spirits are within the natural zone of expansion of its previous registrations, and Washington Place must supplement its response accordingly.

Interrogatory Nos. 18 and 19

Interrogatory Nos. 18 and 19 seek the identification of facts that support Washington Place's contentions. Washington Place objected and refused to provide substantive responses to these Interrogatories on the ground that they "d[id] not comply with Federal Rule of Civil Procedure 34(b)(1)(A)." That rule does not apply to Interrogatories. Moreover, the factual basis for Washington Place's contentions is discoverable. Accordingly, Washington Place must supplement its responses.

Responses to Chatham Imports, Inc.'s First Set of Requests for Production

Document Request Nos. 5, 7 and 16

These Requests seek sales and advertising information relating to the goods on which Washington Place uses the KNOW THY FARMER Mark. Washington Place has refused to produce such information absent "a showing by Opposer that this information is relevant and that disclosure is necessary in furtherance of the claims asserted in this Opposition." Washington Place mischaracterizes the scope of permissible discovery. Pursuant to TBMP Rule 402.01 and Federal Rule of Civil Procedure 26(b)(1), parties may obtain discovery regarding "any nonprivileged matter that is relevant to any party's claim or defense." The information requested by Chatham meets this threshold, and no showing of "necessity of disclosure" is required. *See* TBMP Rule 414(18). Indeed, Washington Place has requested the same type of information from Chatham. (*See, e.g.,* Request for Production Nos. 4, 21, and Interrogatory No. 7.) Any confidentiality concerns raised by Washington Place will be addressed by the protective order. Please confirm that Washington Place will not withhold documents on the basis of this improper objection.

Jeffrey A. Lindenbaum
November 21, 2012
Page 4

Document Request No. 10

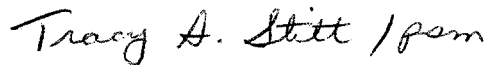
Document Request No. 10 seeks documents relating to trademark searches performed by or for Washington Place in connection with its KNOW THY FARMER Mark. Washington Place refused to produce responsive documents on the ground of privilege. As set forth in its response to Interrogatory No. 6, Washington Place admits that a search was conducted prior to filing the application at issue in this proceeding. That search report is discoverable. TBMP Rule 414(6). Please confirm that Washington Place will produce it.

Production of Responsive Documents

To date, Washington Place has not produced a single document in response to Chatham's discovery requests. Please provide a date by which we can expect to receive responsive documents.

Chatham would appreciate a response to this letter no later than November 30, 2012. I am available to meet and confer by telephone during the week of November 26, 2012, should you wish to discuss any of these issues.

Very truly yours,

A handwritten signature in cursive script that reads "Tracy A. Stitt /psm".

Tracy A. Stitt

cc: John G. Froemming, Esq.

EXHIBIT C



Telephone (914) 941-5668

Facsimile (914) 941-6091

www.colLENIP.com

E-mail: gdavis@colLENIP.com

December 7, 2012

BY E-MAIL TO: tastitt@jonesday.com

CONFIRMATION BY MAIL

Jones Day

901 Lakeside Avenue, North Point

Cleveland, OH 44114

Attention: Tracy A. Stitt, Esq.

RE: U.S Trademark Opposition No. 91203706
Chatham Imports, Inc. v. Washington Place LLC
Our Reference : N552

Dear Ms. Stitt:

We write in response to your letter dated November 21, 2012, regarding discovery. In order to address these outstanding discovery issues and allow the parties ample time to supplement discovery, we propose a sixty (60) day extension to the discovery deadlines. Please advise whether Opposer consents to this extension. Furthermore, please find a substantive response to your November 21, 2012, letter below.

General Objections

We note that we submitted a partially executed copy of the protective order to counsel on December 5, 2012, and counsel countersigned the protective order on December 6, 2012. Therefore, the point regarding the protective order is now moot.

In response to your inquiry regarding whether Applicant will produce documents identifying goods that it intends to use the KNOW THY FARMER Mark in connection with, Applicant will produce documents, to the extent that such documents exist.

Additionally, your letter also points to Washington Places' Interrogatory Nos. 2, 3, and 6, which request similar information about goods that Opposer plans to



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use the FARMER'S Mark in connection with. To date, we have not received such documents and again request that Opposer provide such documents.

First Set of Interrogatories

Interrogatory Nos. 1, 2, and 3 – Applicant has not improperly withheld information. Applicant's Initial Disclosures and Supplemental Initial Disclosures state that the witnesses identified may be contacted through counsel. Both the Initial Disclosures and Supplemental Initial Disclosures provide counsel's contact information.

Furthermore, the individuals identified in Interrogatory Nos. 1, 2, and 3 may similarly be contacted through counsel. Applicant will supplement its response to Interrogatory Nos. 1, 2, and 3 to include information regarding each identified person's affiliation or title, as requested. We note, that our November 30, 2012, letter to counsel requested similar supplemental information regarding the individuals identified in response to Applicant's Interrogatory Nos. 9, 17, and 42. We trust that Opposer will supplement its Interrogatory responses accordingly.

Interrogatory Nos. 8 and 9 – Applicant has not waived its objection that Opposer's number of Interrogatories exceeds the seventy-five (75) limit simply because Applicant answered the remaining Interrogatories. If Opposer can point to any relevant case law that would support this proposition, we ask that you bring it to our attention.

To the contrary, Applicant decided that the more productive and practical approach was to respond to the remaining discovery requests while we worked out a solution to Interrogatory Nos. 8 and 9. If you prefer, we are willing to withdraw all of our responses and proceed solely with resolution of the issue of whether Interrogatory Nos. 8 and 9 exceed the seventy-five (75) limit.

Pursuant to the counting provisions of TBMP Section 405.03(d), Applicant's response to the seven (7) sub-parts in Interrogatory No. 8 and the five (5) sub-parts in Interrogatory No. 9 would indeed exceed the limit imposed by 37 CFR § 2.120(d)(1). To resolve this matter, we inquire whether Opposer is willing to withdraw these Interrogatories.

Interrogatory No. 17 – It is unclear why Opposer requests that Applicant supplement its response to Interrogatory No. 17. Your letter indicates that Applicant fails to identify the goods in which it has used the mark; however, Applicant's response states that it has used the KNOW THY FARMER Mark on "beverages, food and spices." Additionally, information regarding dates that such use commenced is not responsive to this Interrogatory.

Interrogatory Nos. 18 and 19 – Applicant has properly objected to these Interrogatories as overly broad, unduly burdensome, and because they seek confidential, privileged or proprietary information. Interrogatory Nos. 18 and 19 are overly broad because they ask Applicant to identify “all facts and documents” that support Applicant’s claim of no likelihood of confusion and identify “all facts” that are contrary to Opposer’s Notice of Opposition.

The Board has previously found that broad interrogatories, such as these, “to be equivalent to a request for identification of fact witnesses and trial evidence prior to trial, and therefore improper.” *See, Time Warner Entertainment Co. L.P. v. Jones*, Opposition No. 112409, 2002 TTAB LEXIS 462, at *9-12 (January 23, 2002) (precedential opinion). The Interrogatories blanketly ask Applicant to identify everything that may be relevant to the entire case. It is hard to envision a more appropriate time to object to a discovery request as overly broad.

Furthermore, Federal Rule 34(b)(1)(A) is applicable to Applicant’s response to Interrogatory No. 18, since Interrogatory No. 18 requests that Applicant identify documents. We agree that Federal Rule 34(b)(1)(A) does not necessarily apply to Interrogatory No. 19, however, the above-mentioned concept from *Time Warner Entertainment Co. L.P. v. Jones* does apply. Therefore, is it not necessary for Applicant to supplement its responses to Interrogatory Nos. 18 and 19, unless Opposer is willing to narrow these Interrogatories.

First Set of Requests for Production

Document Request Nos. 5, 7, and 16 – Upon Opposer’s showing that the requested documents are relevant to Opposer’s claims, Applicant will provide responsive documents, to the extent that such documents exist.

Document Request No. 10 – Applicant’s former counsel provided Applicant with a legal opinion regarding the results of a trademark search that was performed. Applicant does not have any trademark search reports in its possession or control. Since, the opinion of former counsel is protected by the attorney work-product doctrine, attorney-client privilege, and confidentiality, Applicant will not produce this document. Applicant will log this document in a privilege log, and produce the privilege log.

Additionally, since the protective order is finalized, Applicant will produce documents in response to Opposer’s First Request for the Production of Documents by December 14, 2012.

Tracy Stitt
December 7, 2012
Page 4 of 4 – N552

Please contact us if you have any further questions or if you wish to discuss any of these discovery issues further by telephone.

Very truly yours,
COLLEN /P



Govinda M. Davis

N552_Letter to Still responding to discovery deficiencies_121207

EXHIBIT D

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190
TELEPHONE: +1.216.586.3939 • FACSIMILE: +1.216.579.0212

Direct Number: (216) 586-7019
tastitt@JonesDay.com

JP008044
923185-050404

January 17, 2013

VIA UPS

Govinda Davis
Collen IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562

Re: Chatham Imports, Inc. v. Washington Place LLC

Dear Ms. Davis:

I am writing to follow up regarding several unresolved issues raised in my November 21, 2012 letter to you regarding Washington Place's discovery responses and your December 7, 2012 response to that letter.

Interrogatory Nos. 1, 2 & 3

In your December 7, 2012 letter, you agreed to supplement Washington Place's responses to Interrogatory Nos. 1, 2 & 3 to include the affiliation or title of each person identified therein. Please advise when such supplementation will be provided.

Interrogatory Nos. 8 & 9

As set forth in my letter of November 21, 2012, Chatham's First Set of Interrogatories is well within the 75-question limit set forth in TBMP § 405.03. Moreover, Washington Place did not follow the procedure mandated by 37 CFR § 210.120(d)(1) and TBMP § 405.03(e) for objecting to a set of interrogatories that it contends are excessive in number, and any such objection has been waived pursuant to TBMP § 410. Accordingly, Chatham will not withdraw Interrogatory Nos. 8 & 9 as you request, and will be forced to seek the Board's intervention if Washington Place maintains its refusal to respond to those interrogatories. Please advise by January 24, 2013 if Washington Place will supplement its responses.

Interrogatory No. 17

In response to this Interrogatory, which seeks the factual basis for Washington Place's contention that the goods identified in Application Serial No. 77/962,565 are within the natural zone of expansion of the goods and services identified in Registration No. 3,899,559,

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Govinda Davis
January 17, 2013
Page 2

Washington Place simply states that it has "earlier use" on "beverages, food and spices." To date, Washington Place has refused to provide any further detail, such as the identification of the specific "beverages, food and spices" that Washington Place contends are "related" to the goods identified in Application Serial No. 77/962,565, and the dates of such alleged "earlier" use. Chatham is entitled to the information upon which Washington Place intends to rely for its zone of expansion argument. Please advise by January 24, 2013 if Washington Place will supplement its response to provide the foregoing information.

Interrogatory Nos. 18 & 19

Chatham is willing to narrow the scope of these interrogatories as requested in your December 7, 2012 letter in order to resolve this issue and obtain a substantive response from Washington Place. Chatham seeks the factual basis for Washington Place's contention that no likelihood of confusion exists (Interrogatory 18), and the factual basis for its contention that Registration No. 3,899,599 should not be cancelled as merely descriptive (Interrogatory 19). With those limitations, please advise when we can expect Washington Place's supplemental responses.

Document Request Nos. 5, 7 & 16

Your December 7, 2012 letter states that Washington Place will provide documents in response to these requests "[u]pon Opposer's showing that the requested documents are relevant to Opposer's claims." The assertion that Chatham is required to make a showing that the requested sales and advertising information is relevant to *Chatham's* claims before Washington Place is obligated to produce such information is incorrect. First, information relevant to *any party's claim or defense* is within the scope of discovery. TBMP § 402.01. Second, the relevance of this information to a likelihood of confusion analysis is beyond dispute. Indeed, the Board has held that an applicant's sales figures and advertising expenditures are discoverable. TBMP § 414(18); *see also American Optical Corp. v. Exomet, Inc.*, 181 USPQ 120, 123 (TTAB 1974). Moreover, Washington Place cannot refuse to produce such information as "irrelevant" after it has requested (and Chatham has produced) the same type of information. TBMP § 402.01. Please advise when Chatham can expect to receive this information.

Should you have any questions or wish to discuss these issues further by telephone, please contact us. We look forward to receiving your response by January 24, 2013.

Very truly yours,



Tracy A. Stitt

cc: John G. Froemming, Esq.

EXHIBIT E



Telephone (914) 941-5668

Facsimile (914) 941-6091

www.collnip.com

E-mail: gdavis@collnip.com

January 29, 2013

BY E-MAIL TO: tastitt@jonesday.com

CONFIRMATION BY MAIL

Jones Day

901 Lakeside Avenue, North Point

Cleveland, OH 44114

Attention: Tracy A. Stitt, Esq.

RE: U.S. Trademark Opposition No. 91203706
Chatham Imports, Inc. v. Washington Place LLC
Our Reference : N552

Dear Ms. Stitt:

We are in receipt of your letter dated January 17, 2013, regarding Applicant's discovery responses. We address the unresolved discovery issues outlined in your January 17, 2013, letter and we also address Opposer's deficiencies discussed in your December 7, 2012, letter below:

Deficiencies in Opposer's Objections and Responses to Applicant's First Set of Interrogatories

Interrogatory No. 3: We note that Opposer has produced documents in lieu of a written response to certain parts of Interrogatory No. 3. However, information requested in subparts (d) and (e) are still outstanding. Applicant requests that Opposer supplement its response and indicate "the earliest date susceptible of proof when Opposer made such sales of goods in the United States" and "the identity of all persons having knowledge of the foregoing" as outlined in subparts (d) and (e) respectively.

Interrogatory No. 8: Interrogatory No. 8 does not request information relating to "all customers," as Opposer's December 7, 2012, letter alleges. Notwithstanding, and to resolve this dispute, Applicant will agree that



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Opposer may limit its response to Interrogatory No. 8 by identifying Opposer's classes of customers to whom its goods are offered and/or sold.

Interrogatory Nos. 9, 17, and 42: Opposer's December 7, 2012, response indicates that it is not necessary to supplement its response to Interrogatory Nos. 9, 17, and 42 because full information regarding the individuals is provided in Opposer's Initial Disclosures. However, an individual named in the responses to these Interrogatories, Vincent Arlotta, is not included in Opposer's initial disclosures, therefore, in order to answer these Interrogatories, Opposer must supplement its response by providing Mr. Arlotta's job title. Moreover, Opposer is entitled to this information in a sworn interrogatory response.

Interrogatory No. 19: Your December 7, 2012, response regarding this Interrogatory indicated that since the protective order is finalized, Opposer would supplement its produced documents. To date, we have not received documents regarding trademark searches completed prior to registration of the FARMER'S mark. Therefore, Opposer must supplement its response to Interrogatory No. 19.

Interrogatory No. 24: Interrogatory No. 24 asks Opposer to identify any time when Opposer sought the opinion of counsel regarding its rights in the FARMER'S mark prior to this opposition proceeding. Applicant's objection based on privilege is unfounded. This general information regarding dates or instances when Applicant sought the advice of counsel regarding its United States trademark rights in the FARMER'S mark does not disclose the substance of the communications with counsel, and is therefore discoverable. *See generally, American Standard, Inc. v. Pfizer, Inc.*, 828 F.2d 734, 745 (Fed. Cir. 1987). Thus, Opposer must supplement its response to Interrogatory No. 24.

Interrogatory Nos. 29 and 41: Opposer's objections to Interrogatory Nos. 29 and 41 based on vagueness are unfounded. As our previous letter notes, Opposer seeks a general description of prior or pending court actions, PTO proceedings or other controversies. Other controversies may include settlement and other contractual agreements or trademark disputes between Opposer and third parties. Therefore, Opposer must supplement its responses to Interrogatory Nos. 29 and 41.

Interrogatory No. 32: Opposer's objection that Interrogatory No. 32 is vague and ambiguous is unfounded. Interrogatory No. 32 asks Opposer to identify the "meaning, definition and connotation of Opposer's Mark." Using the

common interpretations of these terms, Applicant seeks information regarding the meaning behind the FARMER'S mark, how the words in the mark are defined and the meaning that the FARMER'S mark is intended to convey. Indeed, an explanation for selection of the FARMER'S mark can be found on Opposer's website. We are entitled to a verified response containing this information. Therefore, since this Interrogatory is not vague or ambiguous, Opposer must supplement its response to Interrogatory No. 32.

Interrogatory No. 33: Your December 7, 2012, response regarding this Interrogatory indicated that, since the protective order is finalized, Opposer would supplement its produced documents. To date, we have not received documents regarding the geographic area of advertising, promotion and marketing of products in connection with Opposer's Mark in the United States. Therefore, Opposer must supplement its response to Interrogatory No. 33.

Interrogatory No. 36: To resolve the dispute over this Interrogatory, Applicant will agree that Opposer may limit its response to Interrogatory No. 36 by identifying all officers of Opposer who were responsible for selection, adoption and use of the FARMER'S mark and explaining the responsibilities of each individual.

Deficiencies in Opposer's Objections and Responses to Opposer's First Set of Requests for Production of Documents

Document Request Nos. 1-3, 5-9, 11, 15-17, 19-20, 23, 26-27: Your December 7, 2012, response regarding the above-mentioned Document Requests indicated that, since the protective order is finalized, Opposer would supplement its document production. To date, we have not received documents referenced in the above-mentioned Requests. Therefore, Opposer must produce such responsive documents.

Applicant's Responses to Opposer's First Set of Interrogatories

Interrogatory Nos. 1-3: Applicant has supplemented its response to Interrogatory Nos. 1-3 and serves its supplemental response contemporaneously with this letter.

Interrogatory Nos. 8-9: As we previously noted, Applicant has not waived its objection that Opposer's number of Interrogatories exceeds the seventy-five (75) limit. Applicant's objection was not untimely. Opposer has clearly exceeded the limit imposed by 37 CFR § 2.120(d)(1) since the Interrogatories contain a total of thirteen (13) sub-parts and if Applicant answered these Interrogatories regarding each of its products, it exceeds the Board imposed limits. Please advise if you wish to reach a resolution on the scope of these Interrogatories, or if you prefer that we withdraw our other responses and proceed with just our objection to that basis. Additionally, these Interrogatories are overly broad and to force Applicant to answer each sub-part regarding each and every product that it has used or intends to use the KNOW THY FARMER mark in connection with is unduly burdensome and therefore improper.

Interrogatory No. 17: Applicant has fully responded to Interrogatory No. 17 regarding Applicant's zone of expansion. Information regarding dates of use and further information regarding related goods is outside the scope of this Interrogatory.

Interrogatory No. 18-19: Opposer's attempt to narrow the scope of Interrogatory Nos. 18 and 19 does not resolve the fact that these Interrogatories are overly broad, unduly burdensome, and ask Applicant to disclose all of the ultimate facts and conclusions relevant to its counterclaims or defenses, which ultimately will be decided by the Board. Unless you wish to further modify this Interrogatory, Applicant stands by its objections.

Applicant's Responses to Opposer's First Set of Document Requests

Request Nos. 5, 7, and 16: Applicant will supplement its responses to Document Request Nos. 5, 7, and 16.

Applicant requests that Opposer supplement its responses with full, complete and substantive answers and documents that support such answers by **February 6, 2013**. Once you have had the chance to review this letter, we are available if you wish to discuss this matter further by telephone.

Tracy Stitt
January 29, 2013
Page 5 of 5 – N552

We look forward to hearing from you.

Very truly yours,
COLLEN /P

A handwritten signature in cursive script, appearing to read "Govinda M. Davis".

Govinda M. Davis

JAL/GMD

Enclosure: Applicant's Supplemental Interrogatory Responses

N552_Letter to Ms Stitt re discovery deficiencies and enclosing supplementary interrogatory responses_130129

EXHIBIT F

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Chatham Imports, Inc.

Opposer/Respondent/Petitioner,

v.

Washington Place LLC

Applicant/Petitioner/Respondent.

Opp. No.: 91203706

Serial No. 77962565

Registration No. 3,829,294

Registration No. 3,899,559

APPLICANT’S FIRST SET OF INTERROGATORIES TO OPPOSER

Applicant Washington Place LLC (“Applicant”) submits herewith for Answer under oath or by affirmation, by Opposer Chatham Imports, Inc. (“Opposer”), the following Interrogatories under Rule 33 of the Federal Rules of Civil Procedure. The Interrogatories shall be deemed continuing and Opposer is requested to serve upon Applicant in the form of supplementary Answers, any additional information requested herein that may be known to Opposer after the date of its Answers to these Interrogatories.

INSTRUCTIONS AND DEFINITIONS

The following definitions and instructions are applicable to Opposer’s First Set of Interrogatories, Opposer’s First Request for the Production of Documents and Things, and Opposer’s First Set of Requests for Admission:

A. “Applicant” means the named Applicant, Washington Place LLC, including its divisions, departments, subsidiaries, parents, partners, joint venture partners, officers, directors, owners, agents, employees, members, accountants, attorneys, any predecessor or successor in

INTERROGATORIES

1. Indicate the name and address of any business, which Opposer presently maintains in connection with trademark usage or trademark licensing in the United States, and describe the type of business activities conducted.

2. Identify and describe each product sold, licensed, or expected to be sold or licensed by Opposer in connection with Opposer's Mark, whether used alone, in typed form, or in conjunction with a design and/or stylized element.

3. For each product identified in the answer to Interrogatory 2, identify:

- (a) the city or state in which said products are sold;
- (b) the identity of all relevant documents showing or describing such products;
- (c) the identity of documents related to such sales;
- (d) the earliest date susceptible of proof when Opposer made such sales of goods in the United States;
- (e) the identity of all persons having knowledge of the foregoing.

4. Identify product literature or documents, including web sites, published by or for Opposer in connection with each of the products identified in the answer to Interrogatory 3, and indicate in your response whether those items identified comprise a complete listing or a representative sampling.

5. With respect to the products sold by Opposer under Opposer's Mark, describe in detail the channels of trade in which such product(s) are marketed or sold.

6. With respect to products Opposer anticipates offering and/or selling under Opposer's Mark, describe in detail the channels of trade in which such products will be marketed, offered or sold.

7. As to the products identified by Opposer as being offered, sold or to be sold under Opposer's Mark, set forth the amount of sales in dollars in the United States since the first sale, broken down on a yearly basis, for each such product.

8. Identify Opposer's customers to whom its goods are offered and/or sold.

9. Identify those individuals most knowledgeable about the nature of Opposer's goods sold under Opposer's Mark.

10. On what date did Opposer first become aware of Applicant?

11. On what date did Opposer become Aware of Applicant's trademarks?

12. On what date did Opposer become aware of Applicant's incorporation of the word "farmer" in its mark?

13. On what date did Opposer first become aware of Applicant's Mark?

14. Identify the date of first use in commerce for Opposer's Mark.

15. Identify and explain the reasons for Opposer's choice of the Opposer's Mark as its trademark.

16. Identify all alternative marks considered by the Opposer before adopting Opposer's Mark.

17. Identify each person having knowledge of the dates and circumstances surrounding Opposer's adoption, first use and/or alleged trademark use of Opposer's Mark.

18. Did Opposer conduct a search, or is Opposer aware of any searches conducted or authorized by Opposer in the U.S. Patent and Trademark Office or elsewhere in the United States, prior to the adoption and use of Opposer's Mark?

19. Identify the results and contents of any searches as described in the answer to Interrogatory 18 above.